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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,793	12/19/2003	Alan E. Hairsine	32210.20.0	5589
22859 7590 12/07/2009 INTELLECTUAL PROPERTY GROUP FREDRIKSON & BYRON, P.A. 200 SOUTH SIXTH STREET, SUITE 4000 MINNEAPOLIS, MN 55402				
EXAMINER WEIER, ANTHONY J				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
12/07/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/741,793

**Applicant(s)**

HAIRSINE ET AL.

**Examiner**

Anthony Weier

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 12-14, 18-21, 24-26, 35-68 and 71-84 is/are pending in the application.
- 4a) Of the above claim(s) 35-54, 57 and 58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-4, 12-14, 18-21, 24-26, 59-68, and 71-79 is/are allowed.
- 6) ☒ Claim(s) 55, 56 and 80-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-840)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims drawn to an invention nonelected with traverse in the reply filed on 2/20/07.

***Claim Rejections - 35 USC § 112, 2nd paragraph***

- 2 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 80-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 80-84 are indefinite in that same refer to "the depression" in the singular when the independent claims refer to the option of singular or multiple depressions. As such, it is not clear if Applicant intends to limit claims 80-84 to the option of only one depression being employed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 55, 56, and 82 are rejected under 35 USC 103(a) as being unpatentable over Dunckel taken together with any one of Davis, Glasser et al, and Shimizu.

Dunckel discloses a process wherein eggs are mechanically and automatically

conveyed and subjected to breaking with knives (92) wherein the contents of same (including yolks) are deposited into a plurality of molds (each having a symmetrical shape) all connected, said eggs then being cooked after moving said molds to a heating area, and said eggs being removed from said pans, and subsequently cooled. Duncel further discloses an embodiment wherein the yolks are broken through mixing to create a scrambled egg mixture that is deposited in the molds (cols. 2-4; Figures).

The claims further call for said mold to comprise a first depression including a first sloped region extending downwardly to a planed region and a second depression within said first, said second depression including a second sloped region extending downwardly to a rounded region. However, such molds designs for eggs are notoriously well known to aid in providing demarcation between the yolk and white portions as taught, for example, in any one of Davis (e.g. Fig. 2<sup>1</sup>, first depression inside of element 4; sloped area in vicinity of element 5; second depression encompassed by element 1 having a sloped region along projection 1 which extended into a slightly rounded bottom at element 3), Glasser et al (Fig. 2, first depression encompassed by flat area in the vicinity of element 2 label; sloped region extending to a planned region in vicinity of element 4 label; the second depression including a slopped region extending to the rounded bottom of the depression), and Shimizu (e.g. Fig. 3; wall of the first depression is at a 90 degree slope to flat area at 13a wherein the second depression at 13c includes a sloping area and rounded bottom. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same to

provide a product having a particular desired aesthetic (uniformity, shape, color distribution, etc.)

***Allowable Subject Matter***

5. Claims 1-4, 12-14, 18-21, 24-26, 59-68, and 71-79 are all allowed. Note that non-elected process claims have been examined and rejoined to the allowed claims.

Claim 80, 81, 83, and 84 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art of record neither discloses nor teaches the rupturing device as set forth in the instant claims wherein the egg are individually broken and the contents of each are separately passed to individual molds in such manner that each mold receives only one egg. Tranin teaches away from same wherein the contents of many eggs are mixed together after breaking.

***Response to Arguments***

6. Applicant's arguments filed 7/15/09 have been fully considered and are convincing of allowance for all of the claims but claims 55, 56, and 80-84 which will be addressed as follows.

Applicant argues that, at most, Dunkel, Davis, Glasser et al, and Shimizu teach only a single depression containing a recessed portion or cavity. Although Dunkel does not teach the two depression feature as claimed, the secondary references of Davis, Glasser et al, and Shimizu were all applied to teach such design. In particular,

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<sup>1</sup> This was a typographical error. Though previously cited as "Fig. 1", it was the figure next to same, actual

the two depression mold design for eggs is notoriously well known to aid in providing demarcation between the yolk and white portions as taught, for example, in any one of Davis (Fig. 2, first depression inside of element 4; sloped area in vicinity of element 5; second depression existing inside of the boundary of the first depression and encompassed by element 1 having a sloped region along projection 1 which extended into a slightly rounded bottom at element 3), Glasser et al (Fig. 2, first depression encompassed by flat area in the vicinity of element 2 label; sloped region extending to a planned region in vicinity of element 4 label; the second depression including a sloped region extending to the rounded bottom of the depression; although pictured in a manner upside down to that likely intended by the instant invention, the instant claims are silent regarding the orientation of the final product), and Shimizu (e.g. Fig. 3; wall of the first depression is at a 90 degree slope to flat area at 13a wherein the second depression at 13c includes a sloping area and rounded bottom). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same not only to provide the demarcation of egg portions (which was intended by the two depression design in each of these secondary references) but also to provide a product having a particular desired aesthetic (uniformity, shape, color distribution, etc.)

All other arguments have been addressed in view of the rejections as set forth above.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1761

/Anthony Weier/  
Primary Examiner, Art Unit 1794

Anthony Weier  
December 3, 2009